

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JINELSIE VARGAS,

Plaintiff,

-against-

ANDREW SAUL, *Commissioner of Social Security*,

Defendant.

USDC SDNY
DOCUMENT
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DATE FILED: 9/28/2022

21-cv-4676 (MKV)

ORDER ADOPTING R&R

MARY KAY VYSKOCIL, United States District Judge:

Jinelsie Vargas, represented by counsel, commenced this action against the Commissioner of the Social Security Administration, pursuant to the Social Security Act, 42 U.S.C. § 405(g), seeking review of Commissioner's decision that Vargas is not entitled to Disability Insurance Benefits or Supplemental Security Income [ECF No. 1]. The Court referred the case to Magistrate Judge Netburn [ECF No. 6]. Vargas filed a motion for judgment on the pleadings, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, seeking vacatur of the Commissioner's decision and remand "for a directed finding of disability and calculation of benefits" or further administrative proceedings [ECF Nos. 19, 20 at 25]. The Commissioner filed a cross-motion for judgment on the pleadings, asking the Court to affirm the Commissioner's decision [ECF Nos. 23, 24].

Magistrate Judge Netburn issued a Report and Recommendation [ECF No. 27 ("R&R")].

She recommended that the Court deny Vargas's motion and grant the Commissioner's motion. No party timely filed any objections the Report and Recommendation. And the Court has not received any untimely objections.

In reviewing a magistrate judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the

magistrate judge.” 28 U.S.C. § 636(b)(1). The Court reviews a report and recommendation to which no objections are filed for clear error. *See* Fed. R. Civ. P. 72; *Colvin v. Berryhill*, 734 F. App’x 756, 758 (2d Cir. 2018); *Edwards v. Fischer*, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006). The Court finds the Report and Recommendation to be well-reasoned, and grounded in fact and law. In particular, Magistrate Netburn correctly concluded that the ALJ did not err when he relied on Vargas’s statement, through counsel, about her alleged disability onset date. R&R at 37 (citing *Zabala v. Astrue*, 595 F.3d 402, 408 (2d Cir. 2010)). Magistrate Netburn also correctly concluded that “substance of the treating physician rule was not traversed” and that the ALJ’s analysis was supported by substantial evidence. R&R at 40, 41–43 (quoting *Estrella v. Berryhill*, 925 F.3d 90, 96 (2d Cir. 2019)).

Accordingly, the Report and Recommendation is ADOPTED in its entirety. Vargas’s motion [ECF No. 19] is DENIED. The Commissioner’s motion [ECF No. 23] is GRANTED. The Clerk of Court is respectfully requested to close this case.

SO ORDERED.

Date: September 28, 2022
New York, NY



MARY KAY VYSKOCIL
United States District Judge